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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

2003 MAY 29 P 12 24

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

MAY 29 2003

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY, AN ARIZONA
CORPORATION, FOR ADJUSTMENTS TO ITS
RATES AND CHARGES FOR UTILITY SERVICE
FURNISHED BY ITS EASTERN GROUP AND
FOR CERTAIN RELATED APPROVALS.

1445
DOCKET NO. W-01455A-02-0619

PROCEDURAL ORDER

BY THE COMMISSION:

On August 14, 2002, Arizona Water Company ("Company") filed with the Arizona Corporation Commission ("Commission") an application for an increase in its rates.

On February 25, 2003, Applicant filed a Motion to Intervene signed "Michelle Byers" in this docket ("Motion"). The Motion stated that Michelle Byers is not the Applicant's correct name, and that the address provided in the Motion is not Applicant's correct address.

No parties objected to the Motion. Because Applicant did not provide a correct name or address, the Motion was not granted, but was instead deemed public comment, by Procedural Order dated March 7, 2003.

On April 23, 2003, a second pleading was filed in this docket, also signed Michelle Byers, objecting to denial of the Motion ("Objection"). The Objection stated that Michelle Byers is one of Applicant's legal aliases, and that Applicant legally represents a group that objects to the denial of the Motion.

Pursuant to the Commission's May 2, 2003 Procedural Order, the Company and the Commission's Utilities Division Staff ("Staff") filed responses to the Objection.

The Company stated in its response that the Motion does not meet the requirements of A.A.C. R14-3-105 ("Rule 105"), because it is impossible to assess whether Applicant has a basis to

1 intervene. The Company states that since neither the parties nor the Commission know Applicant's
2 identity, it is equally impossible to evaluate whether the requested intervention would unduly broaden
3 the proceedings, as Rule 105 requires. The Company therefore believes that intervention should be
4 denied.

5 Staff stated that while common law generally allows a person to use an assumed or fictitious
6 name whenever they desire to do so, as long as there is no intent to defraud, this general rule does not
7 apply to the designations of parties. Staff cited a recent Colorado appellate case which held that a
8 party "seeking to proceed anonymously must show that he or she has a substantial privacy right that
9 outweighs the customary and constitutionally-embedded presumption of openness in judicial
10 proceedings."¹ Staff also cited the Connecticut Supreme Court's recent statement that the "privilege
11 of using fictitious names in actions should be granted only in the *rare case* where the nature of the
12 issue litigated and the interest of the parties demand it and no harm can be done to the public
13 interest."²

14
15 Staff believes the issue should be resolved by reference to the above principles.
16

17 Discussion

18 We agree with Staff that the principles espoused in the cited appellate decisions should apply
19 in the instant case, in conjunction with the Commission's rule governing intervention. Rule 105
20 allows for intervention and participation in Commission proceedings by persons who are directly and
21 substantially affected by the proceedings. As the Company points out, Applicant's use of an alias for
22 purposes of intervention precludes a determination of whether Applicant is directly and substantially
23 affected by the proceedings.
24

25 This rate case proceeding is a public, administrative proceeding where the public interest is of
26

27 ¹ *Doe v. Heitler*, 26 P.3d 539, 541 (Colo. App. 2001).

28 ² *Doe v. Connecticut Bar Examining Committee*, 818 A.2d 14, 33-34 (Conn. 2003) (emphasis in original) (citation omitted).

1 primary concern. The public interest aspect of this case differentiates it from the cases cited by Staff,
2 which stem from private causes of action brought by individuals. This case is not a private cause of
3 action, but is instead a public rate proceeding. The presumption of openness that the courts found in
4 the cited private action cases is therefore even stronger in this public rate proceeding, and weighs
5 heavily against allowing Applicant to intervene under an assumed name.

6 Applicant expressed a concern regarding possible retaliation from the Company for "coming
7 forward." The Motion does not provide a sufficient basis for a finding that such "retaliation" might
8 occur. However, in the event that any sort of retaliation should result from Applicant being granted
9 intervention under Applicant's true name, there is a readily available mechanism for resolution of
10 such an issue at the Commission, through the Commission's customer complaint process.
11 Applicant's stated concern of possible retaliation therefore does not outweigh the presumption
12 against allowing intervention under an assumed name in this public rate proceeding.
13

14 For all the reasons stated above, Applicant should not be allowed to intervene in this matter
15 using a fictitious name. Rule 105 does not preclude Applicant from participating using an alias in
16 this proceeding to provide public comment for the record, either in person or in writing. In the
17 absence of intervention in compliance with the Commission's rules, Applicant's docketed written
18 comments will be considered by the Commission as public comment in its consideration of the
19 Company's request for a rate increase.
20

21 IT IS THEREFORE ORDERED that the March 7, 2003 Procedural Order issued in this
22 matter denying the February 25, 2003, Motion to Intervene remains effective.
23

24 IT IS FURTHER ORDERED that the docketed written comments filed on February 25, 2003
25 and April 23, 2003 shall be included in the record in this proceeding as public written comments.
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27 ...
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1 IT IS FURTHER ORDERED that the deadline for Applicant to file an application to
2 intervene in this matter using Applicant's true name is hereby extended to June 13, 2003. The
3 intervention application shall otherwise comply with the Commission's rules governing intervention,
4 and with the requirements listed in the public notice of this proceeding.

5 DATED this 29th day of May, 2003.

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8 
9 TEENA WOLFE
10 ADMINISTRATIVE LAW JUDGE

11 Copies of the foregoing mailed/delivered
12 this 29 day of May, 2003 to:

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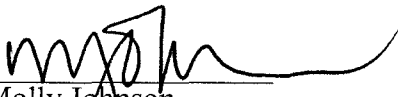
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